FILE COPY

Office Supreme Court, U. S.
FILED
JAN 21 1936

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935

No. 710

PAUL V. McNUTT, GOVERNOR OF THE STATE OF INDIANA, ET AL.,

Appellants,

vs.

McHENRY CHEVROLET CO., INC.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF INDIANA.

STATEMENT AS TO JURISDICTION.

PHILIP LUTZ, JR.,
Attorney General of Indiana,
JOSEPH W. HUTCHINSON,
Assistant Attorney General of Indiana,
LEO M. GARDNER,
Counsel for Appellants.

INDEX.

SUBJECT INDEX.

	Page.
Statement as to jurisdiction	1
The statutory provisions believed to sustain the jurisdiction	2
The statutes of the State the validity of which is involved	2
The date of the decree sought to be reviewed and the date upon which the application for appeal is presented	26
Statement showing that the nature of the case and the rulings of the court are such as bring the case within the jurisdictional provisions relied on	26
The cases believed to sustain the jurisdiction of the Supreme Court	27

TABLE OF CASES CITED.

Brucker v. Fisher, 49 F. (2d) 759	27
Smith et al. v. Wilson et al., 273 U. S. 388	27
Stratton, etc. v. St. Louis Southwestern Railway Company, 282 U. S. 10	27

STATUTES CITED.

Acts of the 79th Regular Session of the General Assembly of Indiana (Acts of 1935 of the General Assembly of Indiana), beginning on page 1206, Chapter 231, Section 1	2, 3
Section 2	5
Section 3	6
Section 4	6
Section 5	7
Section 6	8
Section 7	9
Section 8	10
Section 9	10
Section 10	10
Section 11	12
Section 12	12
Section 13	14
Section 14	15
Section 15	15
Section 16	16
Section 17	17
Section 18	17
Section 19	18
Section 20	18

Page

Acts of the 79th Regular Session of the General Assembly of Indiana (Acts of 1935 of the General Assembly of Indiana), beginning on page 1206, Chapter 231, Section 21 19
Section 22 20
Section 23 20
Section 24 21
Section 25 21
Section 26 22
Section 27 24
Section 28 24
Section 29 24
Section 30 24
Section 31 25
Section 32 25
Section 33 25
Section 34 25
Section 35 25

Constitution of the United States, Section 1 of Article XIV of the Amendments 26

Judicial Code, Section 238, as amended on February 13, 1925 (43 U. S. Statutes at Large 938, 28 U. S. C. A. 345—Pocket Supplement) 2

Judicial Code, Section 266, as amended on February 13, 1925 (43 U. S. Statutes at Large 938, 28 U. S. C. A. 380) 2

IN THE

DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF INDIANA, INDIANAPOLIS DIVISION

PAUL V. McNUTT, GOVERNOR OF THE STATE OF INDIANA; PHILIP LUTZ, ATTORNEY GENERAL OF INDIANA; RICHARD A. McKINLEY, DIRECTOR OF THE DEPARTMENT OF FINANCIAL INSTITUTIONS OF THE STATE OF INDIANA; OSCAR P. WELBORN, HARVEY B. HARTSOCK, C. M. SETSER, MYRON GRAY AND ROBERT BATTON, MEMBERS OF THE COMMISSION OF FINANCIAL INSTITUTIONS OF THE STATE OF INDIANA; HERBERT M. SPENCER, PROSECUTING ATTORNEY OF THE NINETEENTH JUDICIAL CIRCUIT OF THE STATE OF INDIANA,

Appellants (Defendants),

vs.

McHENRY CHEVROLET CO., INC.,

Appellee (Complainant).

JURISDICTIONAL STATEMENT.

The above named appellants (defendants) having presented to the United States District Court in and for the Southern District of Indiana, Indianapolis Division, their petition for the allowance of an appeal to the Supreme Court of the United States from the decree of said Court

entered on October 2, 1935, in cause number 1685 in equity, wherein the appellee above named is complainant and the appellants above named are defendants, now concurrently with the presentation of said petition herewith present and file their separate typewritten statement particularly disclosing the basis upon which it is contended the Supreme Court of the United States has jurisdiction upon appeal to review the decree in question, as follows:

A.

The Statutory Provisions Believed to Sustain the Jurisdiction.

The statutory provisions believed to sustain the jurisdiction are—

Section 266 of the Judicial Code, as amended on February 13, 1925 (43 U. S. Statutes at Large 938);

Title 28, U. S. C. A., Sec. 380;

Section 238 of the Judicial Code, as amended on February 13, 1925 (43 U. S. Statutes at Large 938);

Title 28, U. S. C. A. (Pocket Supplement), Sec. 345.

B.

The Statute of the State the Validity of Which is Involved.

The statute of the State the validity of which is involved may be found in the Acts of the 79th Regular Session of the General Assembly of Indiana (Acts of 1935 of the General Assembly of Indiana) beginning on page 1206 and is as follows:

CHAPTER 231.

(H. 377. Approved March 11, 1935.)

AN ACT to license and regulate and to promote competition in the business of purchasing contracts arising out of retail installment sales, to prescribe the form of such con-

tracts, to empower the department of financial institutions to classify retail installment sales and contracts arising therefrom and to fix and prescribe maximum charges for the extension of credit in retail installment sales.

SECTION 1. Definition of Terms.—*Be it enacted by the general assembly of the State of Indiana,* That in this act, unless the context or subject matter otherwise requires:

The term "retail installment sale," or the plural thereof, means and includes every retail contract to sell specific goods and every retail sale of specific goods to any person:

(a) In which the cash price of the goods is not in excess of $1,500, and may be paid in installments over a period of time, and,

(b) In which the seller has taken or retained a security interest in the goods.

The term "person" includes a corporation or partnership or (of) two or more persons having a joint or common interest.

The term "goods" includes all chattels personal other than money, things in action, emblements, industrial growing crops, things so affixed to the land as to become a part thereof, or things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale.

The term "specific goods" means goods identified and agreed upon at the time a contract to sell or a sale is made.

The term "retail" means to dispose of specific goods to, or to acquire specific goods by, a person who may consume such goods for his personal use.

The term "buyer" means a person who buys or agrees to buy goods, or any legal successor in interest of such person.

The term "retail buyer" means a buyer who is a party to

a retail installment sale, or any legal successor in interest of such person, and includes any person who as surety, indorser or guarantor or otherwise is liable on the obligation created by any retail buyer on any retail installment contract.

The term "seller" means a person who sells or agrees to sell goods.

The term "retail seller" means a seller who is a party to a retail installment sale.

The term "cash price" means the price, measured in dollars, agreed upon in good faith by the parties for the specific goods which are the subject matter of any retail installment sale.

The term "retail installment contract" means any written instrument, lawful under this act, which is executed in connection with any retail installment sale and is required by section 2 hereof or is authorized by section 3 hereof, and the term may include all such instruments executed in connection with any retail installment sale.

The terms "contract to sell," "sale" and "conditional sale" shall have the same meaning in this act as they are respectively defined in the Uniform Sales Act and Uniform Conditional Sales Act.

The term "conditional sales contract" means any written instrument evidencing a conditional sale.

The term "bank or trust company" means any national banking association formed under the laws of the United States with its principal office located in this state and doing business herein and any bank or trust company, any bank of discount and deposit, loan and trust and safe deposit company or trust company organized and doing business under the provisions of any law of this state.

The term "department" means "The Department of Financial Institutions."

The term "manufacturer" means a person who is engaged, directly or indirectly, in the manufacture or distribution of specific goods which may become the subject matter of a retail installment sale in this state.

The term "finance charge" means any consideration which the retail buyer contracts to pay the retail seller for the privilege of paying the principal balance in installments over a period of time.

The term "security interest" means a property interest in goods which are the subject matter of a retail installment sale, limited in extent to securing performance of some obligation of the retail buyer or of some third person to the retail seller and includes the interest of a mortgagee of the goods and the title to the goods whether or not expressed to be absolute, whenever such title is, in substance, retained for security only.

SEC. 2. Written Instrument.—Every retail installment sale shall be evidenced by an instrument in writing signed by the retail buyer, and a copy thereof shall be delivered to him by the retail seller at the time of its execution. An acknowledgment of the delivery thereof contained in the body of the instrument shall be conclusive proof of delivery in any action to enforce any obligation arising out of the retail installment sale. The written instrument shall contain all of the agreements of the parties made with reference to the specific goods which are the subject matter of the retail installment sale, and shall set forth specifically all items and matters required by this act. The reference to insurance shall recite generally the type or types of insurance the retail seller has agreed to procure for the retail buyer but such reference to insurance shall not be construed to imply the scope of the coverage, the terms, exceptions, limitations, restrictions or conditions of the contract or contracts of insurance to be furnished. Nothing in this act shall be con-

strued to require the retail seller to comply with the provisions hereof at any time prior to the delivery of the specific goods to the retail buyer.

SEC. 3. Retail Installment Contracts.—Any retail seller may require any retail buyer to execute and deliver a promissory note to evidence the indebtedness created by any retail installment sale, and, to secure the payment of the indebtedness created by the sale or evidenced by the promissory note or to secure the performance of any other condition of the sale, may require the retail buyer to execute and deliver a conditional sale contract, chattel mortgage or other instrument to give the retail seller a security interest in the specific goods which were the subject matter of the retail installment sale. A written instrument required by section 2 hereof may evidence a conditional sale.

SEC. 4. Provisions of Written Instruments.—Every written instrument evidencing a retail installment sale shall recite the following separate items as such and in the following order:

(1) The cash price of the specific goods.

(2) The amount in cash of the retail buyer's down payment, whether made in money or goods or partly in money or partly in goods.

The term "down payment" for the purpose of this section, shall mean that part payment of the cash price required by the retail seller as a condition to the delivery of the specific goods sold or to be sold or to the extension of credit to the retail buyer for any portion of the cash price.

(3) The unpaid balance of the cash price payable by the retail buyer to the retail seller which is the difference between items (1) and (2).

(4) The cost to the retail buyer of any insurance the retail buyer has agreed to procure, if the retail seller has agreed to purchase the insurance and extend credit to the retail buyer for the price thereof.

(5) The principal balance owed on the retail installment contract which is the sum total of items (3) and (4).

(6) The amount of the finance charge.

(7) The time balance owed by the retail buyer to the retail seller and the number of installment payments required and the amount and date of each payment necessary finally to pay the time balance which is the sum total of items (5) and (6).

Item (4) and item (6) may be added together and stated as one sum in the written instrument and if so stated item (5) may be omitted, but in such event the retail seller shall, within twenty-five days after the making of the retail installment contract, mail to the retail buyer at his address as shown on the retail installment contract a statement reciting the separate amounts of items (4) and (6).

SEC. 5. The Insurance.—Any retail seller who, in any retail installment contract, has agreed to purchase insurance for the retail buyer and to extend credit for the price thereof, shall, within twenty-five days after the making of the retail installment contract, mail to the retail buyer at his address as shown on the retail installment contract, a policy or policies of insurance or in lieu thereof a certificate briefly describing the protection afforded by the insurance procured, and the kind and amount thereof. If the premium for insurance of like kind and amount, as fixed in the published manual of a recognized standard rating bureau designated by the retail seller, is less than the amount charged the retail buyer as fixed in the written

instrument in compliance with item (4) of section 4 hereof, the retail buyer may deduct an amount equal to the difference from the amount of the last payment owed the retail seller. If, before the sale, assignment or transfer of the retail installment contract, the retail seller has not purchased the insurance for the retail buyer which the former, under the terms of the retail installment contract, is required to purchase, any licensee hereunder who becomes the owner, assignee or transferree of the retail installment contract shall, within twenty-five days after the execution of the assignment, purchase the insurance and mail the policies or certificates, instead of the retail seller as required above, and may, subject to the provisions of this section, collect and receive the amount of the cost thereof which was included as a part of the principal balance on the retail installment contract.

SEC. 6. The Finance Charge and Prepayment.—Subject to the provisions of this act, any retail seller at the time of making any retail installment sale may contract for the payment of a finance charge by the retail buyer and collect and receive the same. The finance charge contracted for in any retail installment contract may not exceed the maximum finance charge then authorized by the department as in this act provided. Every retail buyer shall have the right, at any time, to pay the then unpaid time balance owed on any retail installment contract, whether then due or not, and upon payment thereof, any holder of the retail installment contract shall reduce the amount of the then unpaid time balance by the amount fixed and determined in accordance with the regulations of the department in force as of the date of the making of the particular retail installment contract and applicable to such cases. The reduction herein authorized may be known as a discount and every retail buyer, upon full prepayment of any unpaid

time balance owed by him on any retail installment contract, shall receive the discount but only in the amount, at the times and upon the conditions provided herein. The department shall and is hereby authorized to fix and determine the amount of any discount to be given for prepayment as in this section authorized but no such discount shall be for an amount in excess of the amount of the finance charge on any particular retail installment contract.

Every retail seller may, at the time of making any retail installment sale, contract for the payment by the retail buyer of lawful delinquent charges for failure to pay any installment of the time balance on the date specified in the retail installment contract, and any retail seller or any lawful holder of a retail installment contract in which delinquent charges are contracted for may collect and receive the charges lawfully contracted for.

SEC. 7. Limitation on Amount of Debt and Charges.—No retail installment contract authorized by section 3 of this act which is executed in connection with any retail installment sale shall evidence any indebtedness in excess of the time balance fixed, in the written instrument in compliance with item (7) of section 4 of this act, but it may evidence in addition, any agreements of the parties including agreements for the payment of delinquent charges, taxes and fees, including attorney's fees. No retail seller, directly or indirectly, shall contract for or receive from any retail buyer, as consideration for the extension of credit to the retail buyer for the amount of the principal balance, any further or other amount whatsoever for examination, service, brokerage, commission, expense, fee or other thing of value than the finance charge, charges and fees permitted by this act, taxes on account of any retail installment contract or on specific goods sold thereunder and any lawful fees actually paid out by the retail seller to any public

officer for filing or recording or releasing any instrument securing the payment of the obligation owed on any retail installment contract. The lawful fees may be collected when the retail installment contract is made or at any time thereafter, but may not be included in the principal balance fixed in the written instrument in compliance with item (5) of section 4 hereof.

SEC. 8. Limitation on Recovery and Enforcement of Lien. —No retail installment contract which evidences an indebtedness greater than allowed by section 7 hereof and no retail installment contract in connection with which any charge prohibited by this act has been contracted for or received shall be enforceable against any retail buyer for any amount in excess of the principal balance thereof and no security interest created by any such retail installment contract in connection with which an indebtedness is evidenced which is greater than allowed by section 7 hereof or in connection with which any charge prohibited by this act has been contracted for or received shall be enforceable for an amount in excess of the principal balance against any retail buyer in default under the terms of the retail installment contract.

SEC. 9. Limitation on Assignment of Contracts.—Except as in this section otherwise provided, every retail installment contract shall be assignable and the interest therein transferable to any person or persons. No retail seller may sell, assign and transfer any retail installment contract to any person other than a licensee under this act. Any retail installment contract which is or has been owned by a licensee may be enforced and collected by the holder thereof according to its lawful terms.

SEC. 10. Purchase of Retail Installment Contracts.—Any licensee hereunder may purchase any retail installment

contract on such terms and conditions not inconsistent with the provisions of this act, and at such price and upon such terms as to the payment of the price, as may be agreed upon between the licensee and the retail seller. The records of the licensee shall show the price actually paid for retail installment contracts separately assigned to such licensee but retail installment contracts may be assigned in group or in bulk to any licensee as may from time to time be authorized by the department by regulation without disclosing the purchase price of the individual retail installment contracts. The department is authorized to make regulations from time to time concerning the purchase by licensees of retail installment contracts in group or in bulk and any purchase of such retail installment contracts made within the terms of the regulations shall not be construed as an attempt to avoid the operation and effect of this act.

No licensee shall enter into any agreement with any retail seller regarding the purchase of any retail installment contract whereby the retail seller shall receive, directly or indirectly, any benefit from or part of any amount collected or received from any retail buyer, as a finance charge or as the cost of the insurance to the retail buyer, in excess of an amount fixed and determined by the department and no licensee shall directly or indirectly pay any part of the amount collected as a finance charge or retail buyer's cost of insurance to any retail seller on any retail installment contract purchased from him in excess of the amount so fixed; and the department shall fix such maximum amount which may be so paid but without regard to any differentiation as to whether the retail installment contract is sold to the licensee with recourse on the seller in the event of the default of the buyer or without such recourse or under an agreement by which the seller agrees to repurchase the specific goods described in the retail installment contract

if such buyer in such contract defaults and such goods are repossessed.

The provisions of this section shall not apply to any bona fide loan made to any retail seller which the retail seller is under an unqualified duty to repay as such, and which he has secured as to payment, by the sale, assignment, or transfer of retail installment contracts to the lender.

SEC. 11. Licensees.—No person shall purchase retail installment contracts from a retail seller doing business in this state or engage in the business of purchasing retail installment contracts from retail sellers doing business in this state or, unless a bank or trust company, make loans to a retail seller doing business in this state on the security of retail installment contracts or engage in the business of making loans to retail sellers in this state on the security of retail installment contracts unless the department has licensed such person to do such business and has issued to the person a written instrument evidencing the license as in this act provided. Any person who desires to purchase retail installment contracts from retail sellers doing business in this state or to engage in the business of purchasing retail installment contracts from retail sellers doing business in this state or, unless a bank or a trust company, to make loans to retail sellers doing business in this state on the security of retail installment contracts or to engage in the business of making loans to retail sellers doing business in this state on the security of retail installment contracts, shall file an application for a license on forms prescribed by the department and pay the fees required herein.

SEC. 12. Application for License and Fees.—The application for license shall contain:

(a) the name and address of the principal office of the applicant,

(b) if applicant has one or more branches operating in this state, the place of business of each such branch at the date of the application,

(c) the trade name, if any, under which applicant's business is to be conducted, and if applicant is a co-partnership, the name of every member thereof, and if a corporation, of each officer and director thereof,

(d) the total authorized investment used or to be used in the business in this state and if a corporation, the amount of the capital stock thereof issued and outstanding,

(e) a statement of the total amount of business transacted by it in this state during the fiscal year next preceding the date of the application,

(f) such other information touching the business of the applicant as the department may require.

The department is hereby authorized to prescribe the forms of the application and require such additional information as to it may seem necessary properly to regulate the business of the licensee. The forms prescribed shall require the applicant to agree to give notice to all retail sellers in this state with which it does business, when requested so to do by the department, of any and all orders which the department may make respecting classes of retail installment sales or contracts or maximum finance charges as provided in section 26 of this act and to keep in this state, subject to examination, adequate records pertaining to the business done in this state.

The application shall be verified by the proper person and every applicant, other than a bank or trust company or an industrial loan and investment company authorized to issue certificates of indebtedness or investment, shall pay the department the sum of one hundred dollars as an annual

license fee at the time of the filing of the application. Any bank or trust company or industrial loan and investment company authorized to issue certificates of indebtedness or investment which shall apply for a license under this act shall pay the department the sum of ten dollars as an annual license fee at the time of filing of the application. If the period for which the license is to run is less than six months (,) one-half of the annual fee shall be charged. On or before the 20th day of June in each year every licensee shall pay the department the annual license fee provided herein for such licensee for the year commencing on the next succeeding July 1 and shall file an application in the form prescribed by the department. All license fees collected by the department shall be paid into the state treasury and become a part of the financial institution's fund and subject to the provisions of law relating thereto.

SEC. 13. Approval or Rejection of Application.—Upon the filing of any application for license and the payment of the license fee required by this act, if the department shall find that the applicant can operate its business economically and efficiently, it shall thereupon issue and deliver a license to the applicant. In considering economic and efficient operation the department shall take into consideration the fact that this act is designed to promote competition between licensees for the benefit of the class of retail buyers within its scope. The license shall authorize the applicant to do the business otherwise prohibited by this act. The license shall remain in full force and effect until it is surrendered, revoked or suspended as in this act provided. If the department shall find that the applicant cannot operate its business economically and efficiently within the scope of this act, it shall not issue a license to the applicant but shall notify the applicant of the denial, and return to the applicant the fee theretofore paid. The

department shall give every applicant a reasonable opportunity to be heard with respect to the application, and shall approve or deny, by written order, every application for license hereunder within thirty days from the hearing thereon.

SEC. 14. Form of License.—The instrument evidencing the license shall be in such form as may be prescribed by the department, and in addition thereto shall contain the following:

(a) the name of the person licensed,

(b) the name of all partners if applicant is a co-partnership,

(c) the principal office of the applicant.

The instrument evidencing the license, or a certified copy thereof provided by the department, shall be kept posted conspicuously in the principal office of applicant and in every branch maintained and operated by applicant in this state.

SEC. 15. Revocation of License.—The department is hereby authorized to revoke or suspend any license issued under this act, if, after hearing, it finds:

(a) that the licensee has refused to permit the department to make any examination authorized hereunder or has failed to pay the cost of any examination made by the department or the annual license fee required hereby or any penalty assessed by the department against the licensee, or

(b) that the licensee has wilfully failed to comply with any rule or regulation of the department lawfully made hereunder, or

(c) that the licensee has wilfully violated any provision of this act, or any rule or regulation of the department lawfully made hereunder, or

(d) that the licensee has wilfully avoided or attempted to avoid the operation or effect of this act by purchasing any retail installment contract or contracts at a less price than the unpaid balance thereon or by entering into any agreement, combination or understanding (,) express or implied (,) with any retail seller the effect of which agreement, combination or understanding may be to avoid or attempt to avoid the operation or effect of this act.

The department shall give any licensee whose license it proposes to revoke ten days' notice in writing of the contemplated action and of the general grounds therefor. Before the license is revoked or suspended, the licensee shall be given reasonable opportunity to be heard. Licensee (license) may be revoked or suspended only by written order. If the department finds that the grounds for revocation or suspension of the license are applicable only to one branch or some branches operated by the licensee, it may revoke or suspend the license as to that branch or those branches only, or it may revoke the right of the licensee to do business as a licensee in this state. No revocation or suspension or surrender of any license shall impair or affect the obligation of any lawful retail installment contract theretofore made.

SEC. 16. Recourse to Court.—Any person feeling aggrieved with any decision of the department made as in this act provided may commence an action in the circuit or superior court of the county in which the business operated by such person is located against said department as defendant to vacate or set aside any such order or decision of the department upon the grounds that any such regulation, order or decision of the department is insufficient, unreasonable or unlawful, in which action a copy of the complaint shall be served with the summons. The answer of the department to the complaint shall be filed within ten

days after service of summons. All such actions shall have precedence over civil cases not of the same nature pending in any such court and such circuit or superior court shall always be deemed open for the trial thereof and the same shall be tried and determined as other civil actions.

Any such proceeding, action or suit to set aside or vacate any decision or order of the department or to prevent in any way such order or decision from becoming effective shall be commenced and every right of recourse to the courts shall be exercised within thirty days after the entry or rendition of such order or decision and the right to commence any such action, proceeding or suit or to exercise the right of any recourse to the courts shall terminate absolutely at the end of such thirty days after such entry or rendition thereof. Either party to any such action in the circuit or superior court shall have a right of appeal to the supreme court of the State of Indiana as in other civil cases.

SEC. 17. Surrender of License.—Any licensee hereunder may surrender any license theretofore issued to it by the department at any time after ten days' notice to the department in writing stating that the licensee proposes to and does thereby surrender the license as of a certain effective date named. The surrender of a license by a licensee shall not affect the civil or criminal liability or liability for fees or penalties which the licensee may be under by virtue of any act done prior to the surrender of the license.

SEC. 18. Reports of Licensees.—Every licensee hereunder shall annually on or before the 15th day of March file a report with the department giving such relevant information as the department may require concerning the business and operation of the licensee in this state during the preceding calendar year. The report shall be made under oath and in the form prescribed by the department.

SEC. 19. Examination of Licensees.—The department may at any time investigate the business done in this State by any licensee hereunder, and for that purpose examine the books, accounts, records and files used and maintained by such licensees and their agents, brokers or other representatives. The department may also investigate the business of any person who is not a licensee hereunder and who is doing any business or act, the doing of which is prohibited hereby to persons other than licensees or banks or trust companies. For the purpose of discovering violations of this act and procuring information necessary to fix a maximum finance charge applicable to retail installment contracts, the department in making investigations authorized by this section shall have access to all books, accounts, papers, records, files, safes and vaults of any persons being examined, and may require such persons to attend and testify relative to any transactions or business which may come within the scope of this act. In case of the disobedience on the part of any person to comply with any lawful order of the department or any lawful subpœna, or upon the refusal of any witness to appear and testify to any matter regarding which he may be lawfully interrogated, upon petition of the department setting forth the facts, it shall be the duty of the circuit or superior court of the county of which such person is a resident, or the judge thereof in vacation, to compel obedience to the lawful requirements of the subpœna or order and to compel the production of necessary and required books, papers, records, documents and other evidence, and upon the failure, refusal or neglect of any person to comply with the order of the court or the judge thereof, such person shall be punished as for contempt of court.

SEC. 20. Costs of Examination.—The department shall prescribe and fix a schedule of fees, which are hereby im-

posed and shall be charged and collected by the department, for the services rendered and the duties performed by the department, under and by virtue of the provisions of this act in the supervision, regulation and examination of licensees hereunder and the schedule of fees so prescribed and fixed shall be determined in accordance with the provisions of section 35 of the Indiana Financial Institutions Act. For the purposes of this section a licensee hereunder shall be termed a financial institution. The fees fixed and prescribed in the schedule may include the cost incurred by the department in fixing a finance charge under the provisions of this act. No licensee shall be required to pay any fee for examination unless the cost to the department of making such examination shall exceed the license fee paid in compliance with the provisions of this act. All costs assessed by the department at the time of the making of any examination and paid by the licensee shall be paid into the State treasury and become a part of the financial institutions fund and subject to the provisions of law relating thereto. If any licensee refuses to permit the department to make an examination it shall be subject to such penalty as the department may assess, not in excess of one hundred dollars for each day any such refusal shall continue. Any penalty assessed by the department may be collected in an action brought in the name of the State of Indiana on the relation of "The Department of Financial Institutions" in the circuit or superior court of the county in which the licensee has its principal place of business.

SEC. 21. Contracts to Prevent Competition.—No manufacturer shall sell or contract to sell specific goods which may become the subject matter of a retail installment sale in this State, whether patented or unpatented, to any retail seller in this State on the condition or with an agreement or understanding, express or implied, that the retail seller

shall sell, assign or transfer any retail installment contracts arising from the retail installment sales of the goods, or any part thereof, only to a designated licensee or class of licensees, when the effect of the condition, agreement or understanding may be to lessen or eliminate competition, or create, or tend to create, a monopoly in the licensee or class designated. Any such condition, agreement or understanding with any retail seller in this State is hereby declared to be against the public policy of this State and to be unlawful and void.

SEC. 22. Acts Tending to Prevent Competition.—Any threat, express or implied, made directly or indirectly, to any retail seller in this state by any manufacturer that the manufacturer will discontinue or cease to sell, or refuse to enter into a contract to sell, or will terminate a contract to sell, specific goods which may become the subject matter of a retail installment sale in this state, whether patented or unpatented, to the retail seller, unless the retail seller sells, assigns or transfers the retail installment contracts arising from his retail installment sales to any designated licensee or class of licensees, shall be prima facie evidence that the manufacturer has sold or intends to sell such specific goods on the condition or with the agreement or understanding prohibited by section 21 hereof.

SEC. 23.—Further Acts Tending to Prevent Competition.—Any threat, express or implied, made directly or indirectly to any retail seller in this state by any licensee hereunder that is affiliated with or controlled by any manufacturer that the manufacturer will terminate his contract with or cease to sell specific goods which may become the subject matter of a retail installment sale to the retail seller unless the retail seller sells, assigns or transfers the retail installment contracts arising from his retail installment sales to the licensee making the threat, shall be presumed to be made at

the direction of and with the authority of the manufacturer and shall be prima facie evidence of the fact that the manufacturer has sold or intends to sell the specific goods on the condition or with the agreement or understanding prohibited by section 21 hereof.

SEC. 24. Subsidy of Licensees.—No manufacturer shall pay or give or contract to pay or give any thing or service of value to any licensee in this state, and no licensee in this state shall accept or receive or contract or agree to accept or receive, directly or indirectly, any payment, thing or service of value from any manufacturer, if the effect of the payment or giving of any such thing or service of value by the manufacturer, or the acceptance or receipt thereof by the licensee, may be to lessen or eliminate competition or tend to create or create a monopoly in the licensee that accepts or receives the payment, thing or service of value or contracts or agrees to accept or receive the same.

SEC. 25. Rules and Regulations.—The department shall have authority from time to time to make, amend and rescind rules and regulations necessary to carry out and enforce the provisions of this act, including rules and regulations governing the business done in this state by licensees, the content of reports required from licensees and the manner and extent of examinations made of the business of licensees. Among other things, the department shall have authority to prescribe forms in which required information shall be set forth, items or details to be shown in balance sheets and earning statements and methods to be followed in the preparation of accounts necessary to reflect factors in the business of the licensee to be reckoned with by the department when fixing a maximum finance charge on retail installment contracts. The rules and regulations of the department, other than those issued pursuant to the authority vested in the department by section 26 of this act, shall

be published and be effective in the manner and at the time prescribed by the department. No provision of this act imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule or regulation of the department, notwithstanding that the rule or regulation may, after the act or omission, be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

SEC. 26. Classification of Retail Contracts and Variable Finance Charges.—It shall be the duty of the department and the department shall have power, jurisdiction and authority to investigate retail installment contracts and ascertain the facts with reference to retail installment sales and upon the basis of the ascertained facts:

(a) to classify, by general order, retail installment sales or retail installment contracts arising therefrom, according to such system of differentiation as may reasonably distinguish the classes of retail installment sales or the contracts made in connection with such sales, and

(b) to determine and fix by a general order the fair maximum finance charge that may be contracted for in any retail installment contracts or that may be contracted for in retail installment contracts of any classes which may be established by the department, and

(c) to determine and fix by a general order the fair maximum charges that may be contracted for in any retail installment contract and which may be imposed upon the retail buyer for failure to pay any installment of the time balance when it is due.

The department, in determining the classes of retail installment sales or contracts, shall take into consideration the specific goods sold thereunder, the use thereof, the length of time usually given to the retail buyer in which to

pay the unpaid balance owing on any retail installment contracts made in connection with the sales and any other factors which may reasonably afford a basis for the application of different finance charges on retail installment contracts which have or are likely to have the same or substantially the same unpaid balances.

The department, in determining the fair maximum finance charge which may be contracted for in any retail installment contracts or in any retail installment contracts of any classes which may have been established by it, shall take into consideration the availability of credit facilities to individuals who do not have the security generally required by commercial banks and the finance charge which will be necessary in order to induce sufficient amounts of efficiently operated commercial capital to enter into the business of making and purchasing retail installment contracts. The department shall fix charges sufficient to provide adequate credit facilities for retail installment sales.

The department may, from time to time, upon the basis of changed conditions or facts, reclassify retail installment sales and retail installment contracts, and redetermine and refix any maximum finance charge previously fixed by it, but the new finance charge shall not affect pre-existing retail installment contracts lawfully made. Any and all orders which the department may make respecting classes of retail installment sales or contracts or maximum finance charges shall fix the effective date of the new or changed classification or finance charge, but the effective date shall not be earlier than thirty days after the date when notice of such new or changed classification or finance charge is published. Notice to the public, to retail sellers and to licensees hereunder shall be given by publication of the new or changed classification or finance charge by one publication in a daily newspaper of general circulation printed and published in the English language in the city of Indianapo-

lis. In addition, the department may require licensees hereunder to give notice of such new or changed classification or finance charge to all retail sellers with whom the licensees do business in this state.

Any finance charge fixed by the department under the provisions of this act shall be lawful notwithstanding any other law of this state.

SEC. 27. Duty of Retail Seller and Licensee.—Every person to which this act is applicable shall conduct and transact his business in the manner required hereby and every licensee hereunder shall establish and maintain methods for the conduct of his business and affairs coming within the scope of this act in accordance with the requirements hereof and of any rule or regulation of the department made in relation thereto and under the authority of this act.

SEC. 28. Waiver of Statutory Protection.—No agreement of any retail buyer before or at the time of the making of any retail installment contract shall constitute a valid waiver of any provisions of this act.

SEC. 29. Violation of Act—Punishment.—Any person who wilfully violates any of the provisions of this act, or the rules and regulations promulgated by the department under the authority hereof or any person who wilfully in any report or account filed in pursuance of any provision of this act or rule or regulation of the department makes any untrue statement of a material fact or omits to state any material fact necessary to give the department the information lawfully required by it, shall upon conviction, be fined not more than one thousand dollars or imprisoned not more than one year or both.

SEC. 30. Interpretation.—This act shall be interpreted and construed in connection with and as supplemental to the Uniform Sales Act, as amended, and the Uniform Con-

ditional Sales Act and any terms used in this act which are defined in either of said acts shall have the meaning given thereto by the aforementioned acts unless the context hereof clearly requires another meaning. Nothing in this act shall be construed to repeal any part of either of the acts mentioned in this section or any existing law of this state relating to interest or consideration that may be charged upon the loan, use or forbearance of money or sale of credit, but this act shall be construed as supplemental thereto.

SEC. 31. Existing Contracts.—None of the provisions of this act shall apply to any sale or to any contract to sell made prior to the taking effect of this act which if made after this act takes effect would be a retail installment sale or contract and this act shall not affect pending litigation.

SEC. 32. Captions.—No caption of any section of this act shall in any way affect interpretation of this act or any part thereof.

SEC. 33. Severability Clause.—If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

SEC. 34. Short Title.—This act may be cited as the Retail Installment Sales Act.

SEC. 35. Time of Taking Effect.—This Act shall take effect on the first day of July, 1935.

C.

The Date of the Decree Sought to be Reviewed and the Date Upon Which the Application for Appeal is Presented.

The date of the decree sought to be reviewed is October 2, 1935.

The date upon which the application for appeal is presented is December 23, 1935.

D.

Statement Showing that the Nature of the Case and the Rulings of the Court are Such as Bring the Case Within the Jurisdictional Provisions Relied On.

The action in this case was for an interlocutory and permanent injunction for the purpose of suspending and restraining the enforcement, operation and execution of a statute of the State of Indiana, being the Act above referred to, by restraining the action of the appellants (defendants) as officers of said State in the enforcement and execution of said statute upon the ground that said statute violates Section 1 of Article XIV of the Amendments to the Constitution of the United States and that its enforcement will deprive complainant of its property without due process of law and deny it the equal protection of the laws in violation of said provision of the Constitution. (See Bill of Complaint.)

A three-judge Court was convened pursuant to Section 266 of the Judicial Code as amended on February 13, 1925, and the application for an interlocutory injunction was submitted to it and evidence heard. (See entry of July 3, 1935.) Thereafter a final decree was entered. (See entry of October 2, 1935.) The appeal in this case is from the

final decree of the three-judge Court permanently enjoining the appellants (defendants) from enforcing or attempting to enforce against appellee (complainant) any of the provisions of the Act of the General Assembly above set out, being Chapter 231 of the Acts of the General Assembly of the State of Indiana at its 79th Regular Session, on the ground that said Act is unconstitutional and void in that it depriyes complainant of its property without due process of law. (See Conclusions of Law and entry of October 2, 1935.)

E.

The Cases Believed to Sustain the Jurisdiction of the Supreme Court.

The following cases are believed to sustain the jurisdiction of the Supreme Court:

Smith et al. v. *Wilson et al.*, 273 U. S. 388;

Stratton, etc., v. *St. Louis Southwestern Railway Company*, 282 U. S. 10;

Brucker v. *Fisher*, 49 F. (2d) 759.

Respectfully submitted,

PHILIP LUTZ, JR.,
Attorney General;
JOSEPH W. HUTCHINSON,
Assistant Attorney General;
LEO M. GARDNER,
Attorneys for Appellants (Defendants).